

## **MEETING OF THE BOARD OF BANK ADVISORS**

February 13, 2012

9:00 am

Department of Financial Institutions  
324 South State Street, Suite 201  
Salt Lake City Utah

Minutes

### **BOARD MEMBERS PRESENT:**

Dave Brown, Leonel Castillo, Cindy Johnson, and Craig White.

### **DEPARTMENT OF FINANCIAL INSTITUTIONS STAFF PRESENT:**

Commissioner Ed Leary, Paul Allred, Tom Bay, Lonny Stillman, Marilyn Stevens, William Mitchell, Scott Jensen, Ryan Wright, Debra Hudspeth, Don Oldroyd, Kevin Daly, Wayne Thompson, Shaun Berrett, and Sonja Long.

### **OTHERS PRESENT:**

Dee Johnson, Division of Real Estate; Jon Allen, Bank of American Fork; Harley Jacobs, Capital Community Bank; Carl Gallegos, Capital Community Bank; Matt Packard, Central Bank; John Sorensen, Home Savings Bank; Curt Taylor, Heber Valley Bank; Ray Dardano, Marlin Business Bank; Eric Schmutz, State Bank of Southern Utah; Doug DeFries, Bank of Utah; and Michael Fosmark, Continental Bank.

#### **1. Call Meeting to Order – Chairman Leonel Castillo**

Leonel Castillo asked everyone to go around the room and introduce themselves.

#### **2. Minutes –**

Leonel asked for his name to be corrected in the minutes. Cindy Johnson made the motion to accept the minutes, Craig White seconded the motion, it was unanimous.

#### **3. Election of new chairman and vice-chairman -**

Leonel said that he would defer to Commissioner Leary as he had received a letter in the mail on Friday, relieving him of his duties on this board. Commissioner Leary explained that three members of our board have served long and well and have been replaced. He thanked Leonel Castillo, Cindy Johnson, and Doug Bringhurst for their service. If they could please return for our next meeting and we would recognize them officially with a plaque. Our new board members are Matt Packard, Eric Schmutz, and Curt Taylor.

Commissioner Leary explained that we try to keep the diversity as far as size of institution, geographical location. The purpose of this board is to provide feedback or input as to what we are doing as a department. We try to make it an educational experience as well.

Commissioner Leary explained that during the first meeting of a new year the board elects a new chairman and vice-chairman. Leonel asked for motion for a new chair. Matt Packard was nominated as chair, Cindy Johnson seconded the motion. It was unanimous. Matt asked for a motion, Eric Schmutz nominated Curt Taylor, Cindy seconded the motion. It was unanimous. Leonel turned the rest of the meeting over to Matt.

## **5. Appraiser Industry Update – Dee Johnson – Division of Real Estate**

Dee gave out his handout. He went through his handout. Dave Brown commented about the process of finding comparables in today's market and yet the state requires an appraisal. There was a brief discussion on this matter. Craig White said that in Beaver County they only have one certified appraiser. Dee said that if someone accepts the assignment from you and either does not provide it and does not tell you that they have to turn it down, turn in the complaint to Division of Real Estate.

## **6. Legislative Update – Paul Allred**

Before he starts his presentation, he mentioned to the new board members that the board handbook that Sonja gave out is something you should take a look at. At the next meeting he should take the time to go through the review of the Open Meetings Act. We are required to go through that with each of our public bodies. He will go through some of the concerns with having board meetings like this.

On the legislative update at the last meeting I told you about the bill that the department was going to run in response to the Dodd-Frank Act, SB108. It has passed both the Senate and the House. We were very pleased with the fact that it went through each of the committees; there was some lively debate in the House on derivatives. There was concern raised by some committee members and one committee member asked the sponsor of the bill to define a derivative and she indicated that in her past she had been a bank teller that she didn't know what a derivative was. The sponsor made an attempt to describe a derivative and Commissioner Leary jumped in and explained what the real concerns are with Dodd-Frank. We need to pass that legislation to give an opportunity for our banks in Utah to continue to engage in derivative transactions. We are confident that the Governor will sign the bill and we will get the language into the law and then the real hard task comes in writing the administrative rule. So far our federal counterparts have not tackled the administrative rule writing task either. The rule has to be in place by January 2013. We will keep you advised on that.

As far as other legislation, one of the bills we are tracking is SB42. That is a bill by Senator Neiderhauser to write a new provision in the law dealing with short sales. It is proposed that the time limit for institutions to go after deficiencies on short sales be

shortened. There is no provision in the law right now. The bill wants to shorten it from 6 years to 90 days.

Representative Morley is advancing HB 131 – Mechanics lien, Paul said that he has been told this bill is not intended to change policy. It is meant as a cleanup bill to reorganize sections of those provisions.

There is a foreclosure bill; Representative Christianson is running HB 164. A year ago he attempted to change the foreclosure process. He is concerned that borrowers are being unfairly treated. One of the changes is a requirement for a 30-day notice to the borrower, you as the lender have to identify a person that the borrower can have dialogue with on how to cure the deficiency and avoid the foreclosure. Also, another change that if the borrower makes a payment during the 90-day foreclosure period it can extend the foreclosure period another 30 days.

There are other bills that the department is monitoring but that don't affect this group. They are payday lender bills. There is however a concern that some of the things that happen in the payday bills could bleed over into other industries. SB 110 was being monitored by UBA it would have dealt with foreign requirements. Senator McAdams was trying to address a concern in the payday area where borrowers living in West Jordan would be required to defend a lawsuit in Utah County because that is where the lender is based. That has happened, there are certain payday lenders who bring actions where they are headquartered, so Senator McAdams wanted to change that to the lender had to bring the action where the borrower resides. That bill got defeated in committee. Today HB 466 came out which is a virtual twin of SB 110. Howard Headlee's concern is that doesn't bleed over into the banking area.

## **7. Five Year Rule on ORE – Matt Packard**

Matt said that he raised this issue from a banking standpoint, they are getting real close to the five year mark and that they may have a number of pieces of real estate that are being held by banks because the cycle has been so long and so pronounced that we will be forced to liquidate those. He understands that they can ask for individual exceptions to that, but he is afraid that now might not be the time to accomplish that. He wanted to know if there was any way to legislatively or administratively create a one-year, two-year, or three-year extension on that, not in a normal case, but simply for the times that we are in today. Paul said that this rule was recently amended. Administrative Rules are different than the statute. The administrative rules are not in the hands of the legislature; R331-26 was put into place almost a year ago. Prior to that Commissioner Leary went to the three supervisors of the three banking industries, to talk about his concerns over the OREO provisions. In the past, you could get approval to hold the property for longer than five years if you went to the Commissioner. In the discussions, it was decided that with the Commissioner's agreement that would change and the written approval would come from the appropriate supervisor. The idea was that if you can make your case to your supervisor, they can give you the approval to hold that for longer than five years. We

wanted to write a rule that was flexible enough that we could give exceptions. There was a brief discussion on what is expected.

## **8. Community Bank Performance Trends – Tom Bay**

Tom gave his handout to all of the bankers and said that everyone could go through it on their own. Overall he thinks that things continue to improve. Although, last quarter there were only 22 banks with SunFirst Community Bank being gone, so their numbers have been removed. So that has helped with some of the improvement in numbers.

## **9. Commissioners comments –**

Commissioner Leary wanted to let everyone know that he appreciates those in attendance, we learn from these meetings and it is valuable to the department. A couple of things, the stress level at the legislature is not as bad as it has been in years past. We have been given the approval for our base budget for the next fiscal year. Our building blocks for next year, we need to replace our desktop computers and our laptops. We should hear if that is approved in the next few days. Also as part of that, we were asking for two examiner slots, we had originally given up four when we lost a number of the large institutions and we are now to the point with the change in the focus of examinations that we need to increase our examination staff. We have had a couple of retirements in the last couple of months so we are starting to create some vacancies again. We are hopeful that we can add a couple of positions. Both of our retirements were in the compliance examinations; Tom Gibson and Gary Cockerham. We have also asked for an additional secretarial position.

Commissioner Leary talked a little about the national scene. He thinks that we are seeing some improvement in our banks.

Matt Packard wanted the department to know how much he and others appreciate the department.

## **10. Date of next meeting – May 14, 2012 – 9:00 am**

## **11. Adjourn**